IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 78 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEHMOOBBHAI JAMALBHAI SHIAKH

Versus

UREZI ABDULMIYA SAIYAD MOHMED AND PARTNERSHIP FIRM

Appearance:

1. Criminal Revision Application No. 78 of 2001

MR MC SHAH for Petitioner No. 1

..... for Respondents No. 1-3

Mr K G Sheth, APP for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 11/02/2002

ORAL JUDGEMENT

Heard learned Advocate for the petitioner Mr M C Shah and Mr K G Sheth, learned APP for the State. The

petitioner herein has preferred this Criminal Revision Application under section 397 read with section 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code') for setting aside the judgment and acquittal order dated 23.10.2000 recorded by the learned Judicial Magistrate First Class, Gandhinagar in Criminal Case No.5083/94. The Officer of the Cooperative Department, Mr R S Dave had instituted the aforesaid complaint before the trial court against respondent no.1 for offence punishable under sections 5 and 42 read with section 10 of the Gujarat Ownership Flats Act, 1973 for non-furnishing the required information in accordance with law.

2. The learned magistrate recorded evidence produced before him and after appreciation of evidence, came to the decision that no offence was committed by the contesting respondent and, therefore, acquitted the contesting respondent of the said charge. The petitioner has challenged the said order of acquittal against the contesting respondent.

3. I have heard the learned Advocates for the parties and have perused the papers. Learned Advocate for the petitioner has taken me through some orders passed in civil matters between the parties arising from Civil Suit No.1669/91 before the City Civil Court, Ahmedabad. On going through the judgment of the trial court, it appears that no such pleading or other document from the said civil matter has been produced and proved before the trial court. The prosecution in that matter, relied upon the oral testimony of the original complainant Ravinder Shantilal Dave and the statements of Mohanlal Kalidas and Mehboobbhai Jamabhai. No other document was produced in order to prove the factual aspect of the case. In absence of any material on record, the trial court was justified in holding that the case against the contesting respondent was not proved by the prosecution. Therefore, the trial court was justified in acquitting the contesting respondents. Here also, it is found that no material was produced before the trial court and, therefore, it could not be said that the learned Magistrate has committed illegality in acquitting the contesting respondent. This shows that there is no merit in the present revision application and the same is dismissed at admission stage.

11.2.2002 [D P Buch, J.]
msp